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*Will*, 110 N. Y. App. Div. 701, 96 N. Y. Supp. 506. See 19 HARV. L. REV. 528. Connecticut, also, has questioned the doctrine. See *Phelps v. Robbins*, 40 Conn. 250, 272.

## BOOK REVIEWS.

THE WORLD'S LEGAL PHILOSOPHIES. By Fritz Berolzheimer. Translated from the German by Rachel Szold Jastrow, with an Introduction by Sir John MacDonell and by Albert Kocurek. Boston: The Boston Book Company 1912. pp. liv, 490.

The method which the author has proposed for his survey of the varied doctrines comprised under the broad term "philosophy of law" is that of presenting "the successive cultural stages in terms of their distinctive ideas, principles, conceptions, and doctrines, and of their practical issues and demands." The titles of the main chapters suggest at once these stages. The first quarter of the book treats "Origins of Oriental Civilization," "The Ancient Commonwealth" (Greece), "The Civic Empire of Ancient Rome," "The Bondage of Mediævalism." The central portion portrays modern progress as a process of emancipation: first, "Civil Emancipation," with its central conception of natural law; second, "Emancipation of the Proletariat." The last third of the work is given to recent "Sociological Reconstruction of Legal Philosophy." "The history of legal philosophy is essentially the history of the great political movements of liberation, of the emancipation of humanity."

Surely here are great chapters in human life! At first one might find it incredible that, as Sir John MacDonell says in his introduction, "American and English lawyers rarely discuss" these subjects and that problems of this literature have for them "little interest." How can it be that lawyers, of all men, "do not inquire into the justification of coercion"? "do not examine into the relations of economics to law"? "do not deal with the proper province of the state"? It would seem scarcely to need saying that this "whole attitude has become untenable," and that "in times such as these of changes profoundly affecting all parts of law, it is essential to go back to principles, and he who would not be the mere *leguleius* must be the philosophic jurist" (pp. xxvii, xxviii). Or if we consider that the starting-point of the philosophy of law is the "conception of justice, or at least of what satisfies the sense of justice," again it would seem inexplicable that any lawyer could neglect such a study.

And yet great as are the themes considered, it is not unlikely that many a lawyer sincerely desirous of broadening his horizon will feel somewhat baffled as he reads this work. Difficulties will confront him, due in part to the condensation of the subject matter, and in part to the terminology. Any such survey as Dr. Berolzheimer makes must choose between saying something about every or nearly every author, and presenting only the outstanding figures and the great lines of development. Dr. Berolzheimer wisely decides for the second plan, but one may well query whether his work would not be even more valuable for most readers if he had followed it more rigorously. There are vistas, but there are also many stretches where one sees trees rather than the forest. Many doctrines seem meaningless except as one brings to them a larger knowledge of their implications than the brief space allotted them suffices for. And besides the condensation there are the technical terms. A caviler might say that a lawyer could not lawfully object to technicality. But our own technicalities may easily seem enough, and those of another subject a burden too great to be readily assumed. Most of the authors considered approached the philosophy of law from the angle of philosophy rather than from that of law.

It is rare that we meet a Grotius, or a Bentham, or a von Ihering. This makes the task of presentation to readers of the legal profession the more difficult. And besides the necessary technicalities there are needless ones. German philosophy in particular has built up a language of its own, of which Dr. Berolzheimer justly complains.

But in spite of these difficulties, largely inherent in the nature of the material, the reader who works through the shell will find plenty of meat. For he is reflecting on the questions of justice in company with the great thinkers of all time. It is a pleasure to record the author's grasp of the larger principles of the development traced. The significance of the economic schools is lucidly interpreted. As the survey approaches the present and affords fuller treatment of recent or living authors it is possible to give more adequate statements of doctrines. The criticisms are incisive. The accounts of such writers as Kohler, von Ihering, and Stammler should be welcomed by many to whom these authors have not been accessible. But the great significance of such a genetic account of legal philosophies is that it tends to weaken our confidence, that we know what justice is. It shows not only how this or that act has been variously judged, but how the very idea of justice itself has changed. As the various absolutisms of the church, the nobility, the monarch, the law, have followed in order, and as successive classes have one by one gained emancipation, the "natural," or "reasonable," or "just" was inevitably affected. To grasp this is the antecedent of such broader views as the Editorial Committee aims to secure by the publication of the series of translations in which this is Vol. II.

Apart from questions of perspective and terminology there are some qualifications as to adequacy of treatment which I mention dogmatically, prefacing them with the obvious remark that no writer covering so wide a field can be expected to be equally successful with all parts of it. In this case, as is natural, English authors are less adequately treated than German. With Locke, it does not follow that because he was an empiricist in his theory of knowledge his philosophy of law proceeds upon an empirical basis. It is misleading to say that Bentham "champions an epicurean, individual type of utilitarianism," for although his psychology of motives was hedonistic his life-long activity as a reformer of the law and his goal, "the greatest happiness of the greatest number," make the term "epicurean" inappropriate. (Incidentally, it will seem to most English readers disproportionate to allot the Pythagoreans three pages and Bentham two). Spencer's whole treatise on Justice which contains the matured attempt of its author to deduce legal principles from biological laws is not referred to. To point out the philosophy, implicit if not explicit, in Blackstone would also seem desirable.

The translation appears to be excellent. It does not read like a translation. The only general suggestion which I should make is that in the citations from such writings as those of Kant, Fichte, Hegel, Schopenhauer, of most of which we have good translations, the references should be to these and not to the originals which are presumably not so accessible to the user of a translated text.

By such works as this the way will be prepared for what would seem a still more desirable undertaking. A survey neither of the philosophies as such, nor of the law by itself, but of the philosophy *in* the law.

J. H. T.

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THE COURTS, THE CONSTITUTION, AND PARTIES. Studies in Constitutional History and Politics. By Andrew C. McLaughlin. Chicago: The University of Chicago Press. 1912. pp. vii, 299.

This volume is composed of five papers or addresses given by the author upon various recent occasions, dealing with the topics indicated in its title. Two of them are careful historical discussions of the origin of the American